

SENATE BILL No. 558

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-2-3.2.

Synopsis: Net operating losses of high technology companies. Allows certain qualified high technology businesses to sell unused net operating loss carryover to another taxpayer. Provides that income from the sale of the net operating loss carryover is not subject to the adjusted gross income tax. Provides that the total amount of unused net operating losses that may be sold by a taxpayer annually may not exceed \$500,000.

Effective: January 1, 2002.

Simpson, Johnson

January 23, 2001, read first time and referred to Committee on Energy and Economic Development.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 558

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3-2-3.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2002]: **Sec. 3.2. (a) As used in this section, "qualified**
4 **high technology business" means a business that:**

5 **(1) employs or owns capital or property in Indiana or**
6 **maintains an office in Indiana; and**

7 **(2) does either of the following:**

8 **(A) Conducts a majority of its activities in performing**
9 **qualified research in Indiana.**

10 **(B) Has a majority of its gross income derived from**
11 **qualified research if that income is received from:**

12 **(i) products sold from, manufactured in, or produced in**
13 **Indiana; or**

14 **(ii) services performed in Indiana.**

15 **(b) As used in this section, "qualified research" means:**

16 **(1) qualified research described in Section 41(d) of the**
17 **Internal Revenue Code; and**



1 (2) the developing, designing, modifying, programming, and
2 licensing of computer software;
3 that is carried out in Indiana.

4 (c) A qualified high technology business may apply to the
5 department to sell its unused net operating loss carryover to
6 another taxpayer. If approved by the department, a qualified high
7 technology business may sell its unused net operating loss
8 carryover to another taxpayer in an amount equal to at least
9 seventy-five percent (75%) of the dollar value of the net operating
10 loss carryover. The net operating loss carryover purchased by the
11 buyer must be claimed in the year the sale is approved by the
12 department. Any use of the purchased net operating loss carryover
13 for tax carryback or carryforward purposes must comply with
14 applicable law.

15 (d) The following applies to income from the sale of the net
16 operating loss carryover under this section that is received by the
17 seller:

18 (1) The income must be reported on the seller's tax return in
19 the taxable year received.

20 (2) The income is not subject to taxation under this article.

21 (e) The total amount of unused net operating losses that may be
22 sold annually by a taxpayer under this section may not exceed five
23 hundred thousand dollars (\$500,000).

24 (f) An application for the sale of unused net operating losses
25 shall be approved by the department if the seller is a qualified high
26 technology business that:

27 (1) has demonstrated positive net income in any of the two (2)
28 previous full years of ongoing operations as determined on the
29 seller's financial statements;

30 (2) has demonstrated a ratio in excess of one hundred ten
31 percent (110%) of operating revenues divided by operating
32 expenses in any of the two (2) previous full years of operations
33 as determined on the seller's financial statements; or

34 (3) is directly or indirectly at least fifty percent (50%) owned
35 or controlled by another corporation that has demonstrated
36 positive net income in any of the two (2) previous full years of
37 ongoing operations as determined on the corporation's
38 financial statements or is part of a consolidated group of
39 affiliate corporations, as filed for federal income tax purposes,
40 that in the aggregate has demonstrated positive net income in
41 any of the two (2) previous full years of ongoing operations as
42 determined on the consolidated group's combined financial

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1 statements.

2 (g) The department shall adopt rules under IC 4-22-2 to carry
3 out this section, including rules concerning the following:

4 (1) Procedure and criteria for the approval or disapproval of
5 applications filed by qualified high technology businesses
6 selling unused net operating losses.

7 (2) Criteria to provide for the equitable apportionment of
8 qualified sales allowed annually under this section to eligible
9 applicants.

10 SECTION 2. [EFFECTIVE JANUARY 1, 2002] IC 6-3-2-3.2, as
11 added by this act, applies only to taxable years beginning after
12 December 31, 2001.

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